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**IN THE
COURT OF APPEALS OF INDIANA**

ANNETTE ROBY,

Appellant-Plaintiff,

vs.

U.S. STEEL,

Appellee-Defendant.

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No. 93A02-0608-EX-710

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD

The Honorable Linda Hamilton, Chair

Cause No. C-156453

May 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Annette Roby appeals the Worker's Compensation Board's (the "Board") decision to affirm the single hearing member's determination of permanent partial impairment for an injury she sustained while working for her former employer, U.S. Steel. Roby's restated issue on appeal is whether the Board erred when it did not find a permanent total disability.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 11, 2000, Roby, a U.S. Steel employee, was injured on the job. She was climbing a set of metal stairs, while carrying a soft drink can, when she suddenly fell onto her right knee. Roby was treated at the onsite dispensary for her injuries. The dispensary took X-rays, dispensed medicine, and gave her a list of recommended exercises. It also recommended follow-up treatment with Dr. Judson Wood. Roby received treatment from Drs. Wood, Coleman, Lyon, Bonjean, and Pitchford. Dr. Pitchford deduced that Roby suffered from a mild flexion deformity, equal to a 4% partial impairment of her whole person and a 10% partial impairment of the use of her lower extremity. Based on her other conditions, he concluded that she had a permanent total disability.

Roby was released back to work on May 10, 2000, but she did not return to U.S. Steel. Roby received a temporary total disability pension from U.S. Steel for a month after the injury. On September 10, 2001, U.S. Steel extended a permanent incapacity pension that dated back to her last total disability pension payment. Later, Roby filed a worker's compensation action against U.S. Steel, and both parties undertook extensive discovery.

Three months after Roby initiated her worker's compensation claim, the Social Security Administration ("SSA") awarded Roby Social Security Disability benefits without

holding a hearing. The Administrative Law Judge (“ALJ”) found that Roby suffered from the following “determinable severe impairments: degenerative joint disease of the right knee and left ankle with status post surgery of the left ankle, degenerative disc disease with lumbosacral radiculopathy, sleep apnea, obesity, hypertension, and bilateral carpal tunnel syndrome.” The ALJ also found that Roby was limited to sedentary work and that considering her testimony, her age (fifty years old), her eighth grade education, and unskilled work background, Roby had shifted the burden to the SSA to prove that she could perform other jobs. *Appellant’s App.* at 138. “Since the evidence supports a finding that the claimant can perform the demands of no more than sedentary work, a finding of disabled is directed by medical-vocational rule 201.09.” *Id.*

On May 3, 2006, after holding a hearing and reviewing all the evidence, the single hearing member of the Board found that as a result of Roby’s injury at work, she suffered from a permanent partial impairment. Roby timely appealed that decision to the Board. The Board upheld the single hearing member’s permanent partial impairment determination. Roby now appeals.

DISCUSSION AND DECISION

When an appellant challenges the Board’s findings, we apply a deferential standard of review. *Graycor Indus. v. Metz*, 806 N.E.2d 791, 798 (Ind. Ct. App. 2004), *reh’g denied*. This court is bound by the Board’s findings of fact and may consider only errors in the Board’s conclusions. *Id.* We are not bound by the Board’s findings if the evidence leads unerringly and unmistakably to a decision opposite the Board. *Id.* We employ a two-tiered standard of review: 1) we examine the record for competent evidence of probative value to

support the Board's findings; and 2) we examine the findings to determine their sufficiency to support the decision. *Id.* The Board has an obligation to enter findings of fact that support its conclusions, and the findings must be stated with sufficient specificity to allow intelligent review. *Id.* This court will neither weigh evidence nor assess the credibility of witnesses and will consider only the evidence together with all reasonable inferences most favorable to the award. *Id.* Therefore, to prevail, Roby must demonstrate that there was no probative evidence for the Board to conclude as it did. *Id.*

In a worker's compensation case such as this where the worker seeks to prove total permanent disability, the worker bears the burden of establishing that he or she cannot obtain or perform reasonable types of employment. *Shultz Timber v. Morrison*, 751 N.E.2d 834, 836 (Ind. Ct. App. 2001), *trans. denied* (citing *Walker v. State, Muscatatuck State Dev. Ctr.*, 694 N.E.2d 258, 264-65 (Ind. 1998)).

Roby contends that the issue is whether she met her burden of proof to support a finding that she has a permanent total disability; however, the issue before us is whether the evidence presented supports the Board's decision that she has a permanent partial impairment. Roby submits that, absent any other vocational evidence, the Board was bound by the SSA's disability finding. Alternatively, she argues, if this court finds that evidence of the Social Security award does not independently satisfy her burden of proof, she proved a permanent total disability independently through her own testimony and her treating physician's testimony. In support, Roby claims that the single hearing member's failure to address her evidence of a permanent total disability and U.S. Steel's failure to present any

rebuttal evidence of Roby's vocational ability clearly indicates that the evidence does not support the Board's decision.

In analyzing Roby's claim, this Court must first determine what effect, if any, the SSA's disability finding has on the Board. Again, this court may review errors in the Board's conclusions. *Graycor*, 806 N.E.2d at 798.

Indiana has not addressed the impact of a federal social security disability award on a state worker's compensation claim, but Florida has. In *Bob Wilson Dodge v. Mohammed*, 692 So.2d 287, 288 (Fla. App. Ct. 1997), the Florida Court of Appeals held that while receipt of social security disability benefits may be relevant to a worker's compensation claim, a claimant must still prove every element of her claim, including a causal connection between the compensable injury and her inability to earn. As such, while the SSA's award of disability may support a permanent total disability award, Roby still must prove that because of her compensable injury, she is unable to work.

Here, the Board affirmed the single hearing member's conclusion that, "[Roby] may be disabled for Social Security purposes but not for purposes under the [Worker's Compensation] Act. Multiple other factors were taken into consideration and presented for the Social Security award." *Appellant's App.* at 10. In reaching its decision, the Board addressed the causal connection between Roby's right knee contusion and her impairment, and it recognized that there were preexisting medical conditions that affected Dr. Pitchford's and the SSA's permanent total disability determination. Because the SSA considered other factors in awarding disability, namely, Roby's unrelated medical conditions, we cannot say that the SSA's decision creates a presumption of permanent total disability.

Roby next contends that her testimony, either alone or combined with Dr. Pitchford's testimony, satisfied her burden of proving a permanent total disability, and that U.S Steel's failure to admit evidence to rebut her lack of vocation, undermines the Board's conclusion. However, Roby's claim essentially asks us to reweigh the evidence and the credibility of the witnesses, which we cannot do. *U.S. Steel v. Spencer*, 645 N.E.2d 1106, 1109 (Ind. Ct. App. 1995).

Here, the Board, through the findings of the single hearing member and a review of all the evidence presented, found that Roby's only compensable injury was to her right knee. This, the Board found, equated to a ten percent permanent partial impairment to her right leg above the knee. Because there was evidence to support the Board's decision, we are without authority to reverse. *Graycor*, 806 N.E.2d at 798.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.